

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 5**

**COASTAL INTERNATIONAL SECURITY, INC.¹
Employer**

and

**UNITED SECURITY & POLICE OFFICERS
OF AMERICA (USPOA)²
Petitioner**

and

Case 5-RC-16282

**NATIONAL ASSOCIATION OF SPECIAL POLICE AND
SECURITY OFFICERS (NASPSO)³
Intervenor**

and

**INTERNATIONAL UNION, SECURITY, POLICE AND
FIRE PROFESSIONALS OF AMERICA (SPFPA)⁴
Intervenor**

DECISION AND DIRECTION OF ELECTION

Coastal International Security, Inc. (herein the Employer) provides security services to agencies of the United States Government, including at the U.S. Department of Commerce building in Washington, D.C., the only location involved in these proceedings. United Security & Police Officers of America (USPOA) (herein the Petitioner) seeks to represent a unit of all nonsupervisory security guards employed by the Employer at the U.S. Department of Commerce building in Washington, D.C. Two issues were raised at the hearing: (1) the labor organization status of the Petitioner; and (2) whether under § 9(b)(3) of the Act, the Petitioner may be the

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

³ NASPSO's name appears as amended at the hearing.

⁴ SPFPA's name appears as amended at the hearing.

certified collective-bargaining representative of the Employer's security guards at the U.S. Department of Commerce building in Washington, D.C.

National Association of Special Police and Security Officers (herein NASPSO) would not stipulate that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act, while the Employer and the International Union, Security, Police, and Fire Professionals of America (herein SPFPA) agreed to stipulate. The parties stipulated that NASPSO and SPFPA are labor organizations within the meaning of the Act.

NASPSO also contested the petition on the basis that the Petitioner, which seeks to be certified as the collective-bargaining representative of these security guards, may not be certified under § 9(b)(3) of the Act. The Employer and SPFPA did not take a position on this issue.

I have carefully considered the evidence and arguments presented by the parties at the hearing on these two issues. As discussed below, I conclude that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. Furthermore, there is no evidence that the Petitioner is directly or indirectly affiliated with another union that admits non-guard employees, and therefore, the Petitioner may be certified as the collective-bargaining representative of the employees in the petitioned-for unit.

The unit has been represented since 2005 by NASPSO. The parties stipulated that there is no contract bar to an election in this case.

The parties stipulated the following unit of approximately 64 employees is an appropriate unit for bargaining:

All nonsupervisory security guards employed by the Employer at the U.S. Department of Commerce building, located in Washington, D.C., but excluding all other employees, project manager, major, captain, lieutenants, office/clerical employees, professional employees, and supervisors as defined in the Act.

The parties stipulated that Project Manager Steven Minus, Major Charlie Knight, Captain Roy Wallace, and the lieutenants employed at this facility are supervisors within the meaning of the Act and are excluded from the bargaining unit.

LABOR ORGANIZATION STATUS

Section 2(5) of the Act defines a labor organization as follows:

Any organization of any kind, or any agency or employee representation committee or plan, in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employer concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

In support of its status as a labor organization, the Petitioner presented as its witness Latanya Lynn Montgomery, organizer for the Petitioner. Montgomery testified that the Petitioner was founded shortly before January 30, 2009, when bargaining unit security officers banded together to form a union to represent themselves. She stated the organization exists, at least in part, for the purpose of dealing with employers concerning conditions of employment, grievances, and rates of pay. Montgomery further testified that employees participate in the organization by electing union officers and attending meetings. Montgomery was the sole witness at the hearing, and her testimony stands without contradiction.

The record clearly shows, and I find, that the Petitioner admits employees to membership and represents employees, in collective bargaining with employers, concerning wages, hours, and working conditions. I find that the Petitioner exists for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment, and the Petitioner is a Section 2(5) labor organization. *Alto Plastics Mfg. Corp.*, 136 NLRB 850, 851-852 (1962); *Butler Mfg. Co.*, 167 NLRB 308 (1967); *Michigan Bell Telephone Co.*, 182 NLRB 632 (1970).

SECTION 9(b)(3)

Section 9(b)(3) of the Act provides that the Board shall not certify a labor organization “as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.” This provision takes into account potential conflicts of interests by requiring that a guard union be free to formulate its own policies and decide its own course of action, with complete independence from control by a non-guard union.

NASPSO asserts the Petitioner may not be certified because the Petitioner is in contravention to the prohibitions contained in § 9(b)(3) of the Act. NASPSO does not specify reasons why the Petitioner should be disqualified. Latanya Lynn Montgomery, organizer for the Petitioner, testified that the Petitioner does not admit to membership employees other than guards, and that it is not affiliated directly or indirectly with any organization which admits to membership employees other than guards.

In sum, based upon NASPSO’s failure to produce any evidence at the hearing to establish the Petitioner’s direct or indirect affiliation with a non-guard union, I reject NASPSO’s contention that the Petitioner is not a certifiable union. As the Board has consistently recognized since *U.S. Corrections Corp.*, 325 NLRB 375, 376 (1998), “any less stringent standard [than definitive evidence] would seriously undermine the rights of guards to be represented by a union and of guard unions to represent guards.” See also *Children’s Hospital of Michigan*, 317 NLRB 580, 581 (1995).

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accord with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer, Coastal International Security, Inc., is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner, United Security & Police Officers of America (USPOA), the Intervenor, National Association of Special Police and Security Officers (NASPSO), and the Intervenor, International Union, Security, Police, and Fire Professionals of America (SPFPA), labor organizations as defined in Section 2(5) of the Act, claim to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
5. The parties stipulated that Coastal International Security, Inc., a South Carolina corporation with a main office in Lorton, Virginia, and offices and worksite in Washington, D.C., is engaged in the business of providing security services to agencies of the United States government, including at the U.S. Department of Commerce building in Washington, D.C. During the past twelve months, a representative period, in conducting its business operations, Coastal International Security, Inc. performed services valued in excess of \$50,000 in states other than the District of Columbia and the Commonwealth of Virginia, and during the same period, purchased and received at its work sites in the District of Columbia materials and goods valued in excess of \$5,000 directly from points outside the District of Columbia.
6. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All nonsupervisory security guards employed by the Employer at the U.S. Department of Commerce building, located in Washington, D.C., but excluding all other employees, project manager, major, captain, lieutenants, office/clerical employees, professional employees, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the **United Security & Police**

Officers of America (USPOA) or the **National Association of Special Police and Security Officers (NASPSO)** or the **International Union, Security, Police, and Fire Professionals of America (SPFPA)** or by **None**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB

359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **February 26, 2009**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by mail, by electronic filing through the Agency website, www.nlrb.gov,⁵ or by facsimile transmission at (410) 962-2198. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

⁵ To file the list electronically, go to www.nlrb.gov and select the E-Gov tab. Then click on the E-Filing link on the menu. When the E-File page opens, go to the heading Regional, Subregional, and Resident Offices and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. The user then completes a form with information such as the case name and number, attaches the document containing the list of eligible voters, and clicks the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's website, www.nlrb.gov.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., E.S.T. on **March 5, 2009**. The request may be filed electronically through E-Gov on the Board's website, www.nlr.gov,⁶ but may not be filed by facsimile.

(SEAL)

/s/WAYNE R. GOLD

Dated: February 19, 2009

Wayne R. Gold, Regional Director
National Labor Relations Board, Reg. 5
103 S. Gay Street, 8th Floor
Baltimore, Maryland 21202

⁶ Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-filing page the user should select the option to file documents with the Board/Office of the Executive Secretary.